

SPECIAL USE PERMIT

FILE NO.	SP21-035
LOCATION OF PROPERTY	Northwest corner of Parkmoor Avenue and Meridian Avenue (1523 Parkmoor Avenue)
ZONING DISTRICT	CP Commercial Pedestrian
GENERAL PLAN DESIGNATION	Neighborhood/Community Commercial, within the Race Street Light Rail (West of Sunol) Urban Village Area
PROPOSED USE	Special Use Permit to allow the conversion of an existing 25,000 square foot commercial retail use to a church/religious assembly use within a Neighborhood Shopping Center on an approximately 13.29-gross acre site.
ENVIRONMENTAL STATUS	CEQA Exception per Section 15301(a). Existing Facilities
OWNER ADDRESS	John Razumich Imwalle Properties 365 East Campbell Avenue Campbell, CA 95008
APPLICANT ADDRESS	Rebeka Wiggins Vive Church 100 Skyway Drive San Jose, CA 95111

The Director of Planning, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** Special Use Permit to allow the conversion of an existing 25,000 square foot commercial retail use to a church/religious assembly use within a Neighborhood Shopping Center on an approximately 13.29-gross acre site, with no proposed changes to the existing parking configuration or exterior design of the shopping center.
2. **Site Description and Surrounding Uses.** The subject site is an existing vacant retail space within a Neighborhood Shopping Center with other occupied spaces such as a fitness center, a grocery store, and a thrift store. To the west of the shopping center is an auto dealer and commercial building. To the south of the shopping center on the other side of Parkmoor Avenue are commercial office uses. To the east of the shopping center is a gas station, motorcycle shop, and tire shop. To the northeast is a U.S. Post Office and retail uses, and to the northwest of the shopping center are multi-family residential uses.

3. **General Plan.** The subject site is designated **Neighborhood/Community Commercial** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan and is within the future Race Street Light Rail (West of Sunol) Urban Village Area. The land use designation supports a very broad range of commercial activity, including private community gathering facilities.

Analysis: The project is for a church/religious assembly use within an existing Neighborhood Shopping Center. This is consistent with the General Plan designation.

The project is consistent with the following key General Plan policies:

Policy CD-2.9 Encourage adaptable space that can be used for multiple employment or public/quasi-public purposes (e.g., satellite office space, community meeting, and religious assembly uses accommodated in a single space).

Analysis: The existing Neighborhood Shopping Center provides multiple tenant spaces that can be used for a variety of uses. The project is consistent with this General Plan policy.

4. **Zoning Regulations.** The project site is located within the **CP Commercial Pedestrian** Zoning District. Section 20.40.100 of the Zoning Code states that a Special Use Permit is required for a church/religious assembly use.
- Use: Pursuant to Table 20-90 of the Zoning Code, church/religious assembly uses are allowed in the CP Zoning District with a Special Use Permit. Therefore, the use is consistent with the zone.
 - Height and Setbacks: The project is not proposing to modify the setbacks or height of the existing structure. Therefore, no analysis is required for zoning consistency.
 - Parking: The project is not proposing to modify the number of existing parking spaces or configuration. However, the parking ratios required for church/religious assembly use differ from the ratios required for retail use, so a parking analysis is required.

Per Section 20.90.060 of the Zoning Code, the parking spaces required for church use is one space per four fixed seats, or one space per six linear feet of seating, or one space per 30 sq. ft. of area designed for assembly, used together or separately for worship. Per the project plans, there are 380 seats, which results in 95 parking spaces required.

This is compared to the existing retail use of 25,000 gross square feet, which requires parking at a rate of one space per 200 square feet of net floor area (21,250 square feet), which results in 107 spaces required.

Analysis: The Neighborhood Shopping Center provides a total of 790 parking spaces for the entire center. Since the church use requires less parking than the existing retail use, the project is deemed consistent with the parking requirements.
 - Bicycle Parking: Per Table 20-190, the project is required to provide bicycle parking spaces at a rate of one per 60 fixed seats, or one per 90 linear feet of seating, or one per 450 sq. ft. of area designed for assembly, used together or separately for worship. With 380 seats, the project is required to provide seven bicycle spaces.

Analysis: The project is providing eight bicycle spaces. This is consistent with the requirement.

5. **Environmental Review.** Under the provisions of Section 15301(a) Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is exempt from the environmental review requirements of Title 21 of the San José

Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15301(a) applies to projects consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The key consideration is whether the project involves negligible or no expansion of use.

Analysis: The project is a Special Use Permit to allow the conversion of an existing 25,000 square foot commercial retail use to a church/religious assembly use within the Neighborhood/Community Commercial General Plan land use designation, within the Race Street Light Rail (West of Sunol) Urban Village Area, and the CP Commercial Pedestrian Zoning District, as provided for under the Categorical Exemption per CEQA Guidelines Section 15301(a), in that the structure is existing and currently vacant. The project would result in a change of use from retail to church/religious assembly.

The approval of the Special Use Permit would not trigger any additional or expanded use of the project site. No increase or decrease in square footage is proposed. Existing setbacks and height will remain unchanged. Further, none of the exceptions under CEQA Section 15300.2 apply to the project.

Therefore, pursuant to Public Resources Code Section 21083 and categories of exemptions adopted pursuant to the Public Resources Code Section 21084, it has been determined that the project qualifies for the Class 1, Section 15301(a), Existing Facilities exemption, that the project will not result in a significant effect on the environment, and that it is exempt for further environmental review under CEQA.

6. **Special Use Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Special Use Permit, as follows:
- a. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies.
Analysis: As analyzed above, the project to convert the use of an existing retail space to church/religious assemble use is consistent with the Neighborhood/Community Commercial General Plan Land Use Designation and General Plan Policies. The use is allowed within Neighborhood/Community Commercial, and the project site is not within a specific plan or development policy area other than the future Race Street Light Rail (West of Sunol) Urban Village Area, for which the Urban Village Plan and Guidelines have not yet been prepared or adopted.
 - b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.
Analysis: Church/religious assembly uses are allowed in the CP Commercial Pedestrian Zoning District with a Special Use Permits per Table 20-90 of the Zoning Code. The project is consistent with the parking, height, setbacks, and all other requirements of the CP Zoning District. Therefore, the project is consistent with the municipal code development standards.
 - c. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is subject to and conforms to the Public Outreach Policy 6-30 for Pending Land Use and Development Proposals. The on-site sign has been posted at the site since October 22,2021, to inform the neighborhood of the project. Public Notice of

the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area.
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site.
 - iii. Be detrimental to public health, safety, or general welfare.

Analysis: The site is surrounded by a motorcycle dealer and commercial building to the west of the shopping center. To the south of the shopping center on the other side of Parkmoor Avenue are commercial office uses. To the east of the shopping center is a gas station, motorcycle shop, and tire shop. To the northeast is a U.S. Post Office and retail uses. And to the northwest of the shopping center are multi-family residential uses. The project would not negatively affect the utility or value of surrounding properties in the neighborhood. The project would convert a vacant commercial space within an existing shopping center from retail use to church/religious assembly use. The use would not be detrimental to public health, safety, or general welfare.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area.

Analysis: The Special Use Permit would authorize the conversion of an existing vacant retail space into a church/religious assembly use. The subject site is physically suitable for the project because all project components are existing within the project site.

- f. The proposed site is adequately served:
- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate.
 - ii. By other public or private service facilities as are required.

Analysis: The subject site is well-served by Parkmoor and Meridian Avenues. The existing streets and utilities are of sufficient capacity to serve the project as evidenced by the issuance of the Final Public Works Memo dated 10/13/21.

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project scope does not include construction, parking restriping, or revisions to the exterior of the building, and therefore will not require measures to address noise, stormwater runoff, drainage or erosion. Church/religious assembly uses are not usually considered a source of significant odor and would not impact adjacent properties. For these reasons the project is not anticipated to have an unacceptable negative impact on adjacent properties.

In accordance with the facts and findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director of Planning, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system

available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Special Use Permit plans entitled, “Vive Church” dated November 2021, on file with the Department of Planning, Building and Code Enforcement (“Approved Plans”), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
7. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
8. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and state, and federal laws.
9. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
11. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
13. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
14. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
15. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
16. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
17. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

18. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
19. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, SP21-035, shall be printed on all construction plans submitted to the Building Division.
 - b. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
 - c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
20. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as amended and adopted by the City.
21. **Revocation, Suspension, Modification.** This Special use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **19th day of January 2022.**

Christopher Burton, Director
Planning, Building, and Code Enforcement

Deputy